

**BRCV2005-00783**  
**Arbour v Micro Optical**

<b>File Date</b>	07/19/2005	<b>Status</b>	Disposed: transfered to other court (dtrans)
<b>Status Date</b>	08/22/2005	<b>Session</b>	A - CtRm 1 - (Fall River)
<b>Origin</b>	1	<b>Case Type</b>	B22 - Employment Discrimination
<b>Lead Case</b>		<b>Track</b>	F

<b>Service</b>	10/17/2005	<b>Answer</b>	12/16/2005	<b>Rule 12/19/20</b>	12/16/2005
<b>Rule 15</b>	12/16/2005	<b>Discovery</b>	05/15/2006	<b>Rule 56</b>	06/14/2006
<b>Final PTC</b>	07/14/2006	<b>Disposition</b>	09/12/2006	<b>Jury Trial</b>	Yes

**PARTIES**

**Plaintiff**

Ann Marie Arbour  
254 Pearl Street Extension  
Active 07/19/2005

**Private Counsel 630025**

David R Ardito  
Bates Bldg.  
7 North Main Street, Suite 215A  
Attleboro, MA 02703-3534  
Phone: 508-431-2222  
Fax: 508-431-2211  
Active 07/19/2005 Notify

**Defendant**

Micro Optical  
33 Southwest Park  
Served: 08/02/2005  
Served (answr pending) 08/15/2005

**Private Counsel 217170**

Robert M Hale  
Goodwin Procter  
53 State Street  
Exchange Place  
Boston, MA 02109  
Phone: 617-570-1000  
Fax: 617-523-1231  
Active 08/23/2005 Notify

**Private Counsel 658100**

Erin S. Martino  
Goodwin Procter  
53 State Street  
Exchange Place  
Boston, MA 02109  
Phone: 617-570-1000  
Fax: 617-523-1231  
Active 08/23/2005 Notify

By Photostatic Process

  
Asst. Clerk of Courts

**Other interested party**

FILE COPY  
Active 07/19/2005 Notify

**ENTRIES**

Date	Paper	Text
07/19/2005	1.0	Complaint & civil action cover sheet filed

**BRCV2005-00783**  
**Arbour v Micro Optical**

Date	Paper	Text
07/19/2005		Origin 1, Type B22, Track F.
08/15/2005	2.0	SERVICE RETURNED (summons): Micro Optical, service made on August 02, 2005 (in hand)
08/22/2005	3.0	Notice for Removal to the United States District Court filed by Micro Optical
08/22/2005		Case REMOVED this date to US District Court of Massachusetts

**EVENTS**

Date	Session	Event	Result
07/19/2005	CtRm Main - (Taunton)	Status: by clerk Initial One Trial Review	Event held as scheduled

COPY

I hereby certify that the foregoing document is true and correct copy of the  
☐ electronic docket in the captioned case  
☐ electronically filed original filed on \_\_\_\_\_  
☐ original filed in my office on \_\_\_\_\_

Sarah A. Thornton  
 Clerk, U.S. District Court  
 District of Massachusetts

UNITED STATES DISTRICT COURT  
 DISTRICT OF MASSACHUSETTS

By: Sarah A. Thornton  
 Deputy Clerk

ANN MARIE ARBOUR,

Plaintiff,

v.

THE MICROOPTICAL CORPORATION,

Defendant.

X  
X  
X  
X  
X  
X  
X  
X  
X  
X  
X

Civil Action No.

05 - 11730 - 70

NOTICE OF REMOVAL

Defendant THE MICROOPTICAL CORPORATION ("MicroOptical") files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446 and hereby removes this action from the Superior Court of the Trial Court of the Commonwealth of Massachusetts, Bristol County (the "Superior Court") to the United States District Court for the District of Massachusetts. As its reasons for removal, MicroOptical states:

1. Plaintiff Ann Marie Arbour commenced an action in the Superior Court against MicroOptical titled *Ann Marie Arbour v. Micro Optical*, Docket No. BRCV 2005-00783 (the "Pending Action"). MicroOptical is the sole defendant in the Pending Action. A true and correct copy of the Summons and Complaint in the Pending Action is attached hereto as F A.

2. Plaintiff's Summons and Complaint were delivered to MicroOptical on 2005. Therefore, this Notice of Removal is timely.

3. In paragraphs 21-26 of her Complaint, Plaintiff seeks relief for an a' violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.*, a ("Title VII"), and the American with Disabilities Act, 42 U.S.C. §12101 *et seq.*

4. Based on those allegations, this action is a civil action over which this Court has jurisdiction. The Court's jurisdiction over Title VII claims arises under 42 U.S.C. §2000e-5(f)(3), which, in material part, provides as follows:

Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter.

The Court's jurisdiction over ADA claims arises under 42 U.S.C. § 12117(a), which states, in relevant part, that "[t]he powers, remedies, and procedures set forth in sections...2000e-5....of this title shall be the powers, remedies, and procedures this subchapter provides...to any person alleging discrimination on the basis of disability in violation of any provision of this chapter...."

5. Therefore, this Court has jurisdiction over all claims and all parties. The Court has jurisdiction over the Complaint pursuant to 28 U.S.C. §1331, 42 U.S.C. 2000e-5(f)(3), and 42 U.S.C. §12117(a). The Complaint is properly removed pursuant to 28 U.S.C. §§ 1441 and 1446.

6. The pending action is properly removed to this Court under 28 U.S.C. §§ 1441 and 1446 because it is pending in Bristol County, Massachusetts, which lies within this District.


Respectfully submitted,

THE MICROOPTICAL CORPORATION

By its attorneys,



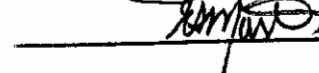
Robert M. Hale (BBO #217170)  
Erin S. Martino (BBO #658100)  
GOODWIN PROCTER LLP  
Exchange Place  
Boston, MA 02109-2881  
617.570.1000

Attest:   
Clerk of Courts

Dated: August 22, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail by hand on 8/22/05



COMMONWEALTH OF MASSACHUSETTS  
SUPERIOR COURT DEPARTMENT

BRISTOL, ss.

TAUNTON DIVISION

\*\*\*\*\*

ANN MARIE ARBOUR,  
Plaintiff,

Bristol County Superior Court

V

Civil Docket No: BRCV 2005-00783.

MICRO OPTICAL,  
Defendant.

COMPLAINT

\*\*\*\*\*

1. The Plaintiff, Ann Marie Arbour, is an individual residing at 254 Pearl Street Extension in Attleboro, Bristol County, Massachusetts.
2. The Defendant, Micro Optical, is upon information and belief, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, and maintains an office and a place of business at 33 Southwest Park, Westwood, Massachusetts.

FACTS

3. The Plaintiff began her employment with the Defendant on or about June 25, 2001, earning \$17.00 per hour.
4. During her employment with the Respondent, the Plaintiff had a brief dating relationship with a co-worker.
5. After the relationship with her co-worker ended, the co-worker continued to make unwelcome advances towards the Defendant, causing the Plaintiff emotional distress and anxiety. In October of 2001, the Plaintiff's illness worsened and she was ultimately hospitalized.
6. At the conclusion of her hospitalization and upon return to work for the Defendant, the co-worker began a series of cruel emotional harassment, creating a hostile environment.
7. After making complaints to the Defendant about the co-worker's harassment, the Plaintiff was told that she must tolerate the behavior because the co-worker was an intricate part of the company.
8. The Plaintiff took a short leave of absence in November of 2002 to have surgery. She returned to her employ on or about November 18, 2002 and the hostile environment and harassment continued.



9. After numerous complaints to the Defendant, the Plaintiff was told to take a leave of absence to 'pull herself together', which she did, returning to work on or about January 6, 2003; however, the harassment continued.
10. After several more complaints to the Defendant nothing was done to cease the co-workers behavior.
11. The harassment continued throughout the remainder of the Plaintiff's employ with the Defendant, causing her to seek treatment with John P. Raftery, who ordered her not to return to work until the negative working environment was omitted from her place of employment. The Plaintiff requested a leave of absence and was granted same. The Plaintiff went out on long-term disability.
12. While out on long-term disability, the Plaintiff received notice from the Defendant stating that it did not feel that a hostile working environment existed and that they would do nothing to change the conditions. She was further notified that prior to her return to work, she would have to meet certain conditions, including: (1) submit a letter from the Plaintiff's doctor releasing her to return to work; and (2) she would have to disclose information pertaining to her religious beliefs.
13. The Plaintiff's long-term disability ended; however, the 'negative working environment' was not corrected; therefore the Plaintiff's doctor refused to release her back to work. Because her doctor refused to release her back to work, the Defendant would not allow her to return to work.
14. The Plaintiff's doctor would not release her back to work because the Defendant engaged in a series of attacks on the Plaintiff's religious beliefs.
15. The Plaintiff is a member of a religion that believes in witchcraft.
16. The Defendant would attack the Plaintiff's religious beliefs by having his employees sing or hum tunes from the *Wizard of Oz*.
17. The Defendant admitted under oath at an unemployment hearing that his employees did such but only because it was a product line that the company had been working on.
18. The Plaintiff repeatedly told the Defendant's supervisor that she found these comments and songs offensive and against her religious belief.
19. The Defendant did nothing to stop his employees from these attacks on the Plaintiff's religious beliefs.
20. The Plaintiff was terminated by the Defendant on October 23, 2003.

**COUNT I**

**Discrimination Against a Disabled Person**

21. The Plaintiff incorporates by reference all allegations set forth in Paragraphs 1 through 20 of this Complaint as it sets out in full herein.
22. The Plaintiff was a disabled person under the law.
23. The Plaintiff remained ready, willing and able to perform her duties under employment with the Defendant with reasonable accommodations.
24. The Defendant failed to provide the Plaintiff with reasonable accommodations.
25. The Defendant discharged the Plaintiff because her treating doctor would not release her to return to work without the necessary reasonable accommodations made and the Defendant would not allow the Plaintiff to return to work without being released by her doctor to do so.
26. By the above conduct, the Defendant is in direct violation of the Americans with Disabilities Act and Title VII.

**COUNT II**

**Intentional Infliction of Emotional Distress**

27. The Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 26 of this Complaint as it sets out in full herein.
28. The Defendant has intentionally inflicted emotional distress upon the Plaintiff.
29. The Plaintiff has suffered emotional distress, mental anxiety, loss of reputation and humiliation.

**COUNT III**

**Negligent Infliction of Emotional Distress**

30. The Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 29 of this Complaint as it sets out in full herein.
31. The Defendant has negligently inflicted emotional distress upon the Plaintiff.
32. As a result, the Plaintiff has suffered emotional distress, mental anxiety, loss of reputation and humiliation.

**COUNT IV**  
**Discrimination Based on Religion**


33. The Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 32 of this Complaint as it sets out in full herein.
34. The Defendant requested that the Plaintiff disclose her Religious Beliefs prior to returning to her position, which is a violation of the Plaintiff's rights.
35. The Defendant has an obligation to prohibit against disparate treatment based upon creed or religion ; and a duty to make reasonable accommodations.

**WHEREFORE**, the Plaintiff respectfully prays this Honorable Court to advance this case on the docket, order a speedy hearing at the earliest practicable date, cause this case to be in every way expedited and upon such hearing to:

- 1) Issue a declaratory judgment that the Defendant's acts, policies, practices and procedures complained of herein violated the Plaintiff's rights;
- 2) Order the Defendant to make the Plaintiff whole by ordering damages for damages for loss of income and lost fringe benefits;
- 3) Award damages for discrimination in accordance with the Americans with Disabilities Act;
- 4) Award damages for emotional distress and loss of reputation damages; and
- 5) Order such other and further relief as this Court deems just and proper.

**PLAINTIFF REQUESTS TRIAL BY JURY.**

**A True Copy By Photostatic Process**  
**Attest:**

  
Clerk of Courts

Respectfully submitted,  
**ANN MARIE ARBOUR,**  
By and through her attorney,

---

David R. Ardito, Esquire  
Bates Building, Suite #215A  
7 North Main Street  
Attleboro, MA 02703  
1-508-431-2222  
BBO# 630025



Form #42

## COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPT. OF THE TRIAL COURT

CIVIL ACTION

No. BRCV2005-00783-1

Ann Marie Arbour, Plaintiff (s)

v.

Micro Optical, Defendant(s)

(TO PLAINTIFF'S ATTORNEY :

PLEASE INDICATE TYPE OF ACTION INVOLVED :—

TORT — MOTOR VEHICLE TORT — CONTRACT —

EQUITABLE RELIEF — OTHER.)

## SUMMONS

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to serve upon DAVID R. Architoplaintiff's attorney, whose address is 7 N. Main St., #215A, Attleboro MA 02703

an answer to the complaint which is herewith served upon you, within (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this Court at ..... either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Hon. Barbara J. Rouse, Adm. Justice of the Superior Court Dept. of the Trial Court, at Taunton, the 27th day of July, in the year of our Lord two thousand and five.

A TRUE COPY, ATTEST:

DEPUTY SHERIFF

DATE 8/2/05

Magistrate

A True Copy By Photostatic Process

Attest:

Asst. Clerk of Courts

## NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. If the Commonwealth or an officer of agency thereof is a defendant, the time to be inserted is 60 days.

NOTICE TO DEFENDANT — You need not appear personally in Court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's Office.

#3

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

BRISTOL, ss.  
DEPARTMENT

SUPERIOR COURT

Taunton Division

BRISTOL, SS SUPERIOR COURT

FILED

**AUG 22 2005**

MARC J. SANTOS, ESQ.  
CLERK/MAGISTRATE

ANN MARIE ARBOUR,

Plaintiff,

v.

THE MICROOPTICAL CORPORATION,

Defendant.

X  
X  
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X  
X  
X  
X  
X  
X  
X

Civil Action No. BRCV 2005-00783

**NOTICE OF FILING OF NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. § 1446(d), Defendant THE MICROOPTICAL CORPORATION hereby gives notice to the Superior Court of Bristol County, Taunton Division, and the attorney for Plaintiff Ann Marie Arbour, that, on August 22, 2005, Defendant filed a Notice of Removal, thereby removing this action to the United States District Court for the District of Massachusetts. A certified copy of the Notice of Removal is attached hereto as Exhibit A.

Respectfully submitted,

THE MICROOPTICAL CORPORATION

By its attorneys,

By Photostatic Process  
*[Signature]*  
Asst. Clerk of Court

*[Signature]*  
Robert M. Hale (217170)  
Erin S. Martino (658100)  
GOODWIN PROCTER LLP  
Exchange Place  
Boston, MA 02109-2881  
617.570.1000

Dated: August 22, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail (by hand) on 8/22/05.

GOODWIN | PROCTER

Erin S. Martino  
617.570.8179  
emartino@  
goodwinprocter.com

Goodwin Procter LLP  
Counsellors at Law  
Exchange Place  
Boston, MA 02109  
T: 617.570.1000  
F: 617.523.1231

August 22, 2005

BY HAND

Clerk of the Court  
Bristol County Superior Court  
Taunton Division  
Civil Claims  
15 Court Street  
Taunton, MA 02780

**Re: Ann Marie Arbour v. The MicroOptical Corporation**  
**Civil Action No. 05-00783**

Dear Clerk:

Enclosed for filing and docketing in the above-referenced action, please find Defendant's Notice of Filing of Notice of Removal. Kindly acknowledge receipt of the foregoing document by date stamping the copy and returning the same to the waiting messenger.

Thank you for your assistance in this matter.

Very truly yours,



Erin S. Martino

ESM:je  
Enclosure

cc: David R. Ardito, Esq.